IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 517 OF 2003

Smt. Chandrabhagabai Wd/o
Uddhav Gadewar ...Petitioner

Versus

Shashikant Venkatesh Bejgamwar
and others ...Respondents

.....

Mr. A.V. Anturkar, counsel for Petitioner

Mr. S.N. Chandrachud, counsel for Respondent No.1.

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CORAM: B. H. MARLAPALLE, J.

DATED: 3RD MARCH, 2005

P. C.:-

1. Heard Mr.Anturkar, the learned counsel for the petitioner and Mr. Chandrachud, the learned counsel for the respondent No.1.

2. This petition arises from the order rejecting the application for interim injunction at Exh.5 filed in Special Suit Suit No. 148 of 1989 and confirmed in Misc. Civil Appeal No. 81 of 1989 by the learned Additional District Judge at Pune vide his judgment and order dated 10.1.1991. At the first instance, the impugned orders were challenged in Civil Revision Application No. 341 of 1991 and the same was allowed to be converted into the present writ petition. The

reliefs prayed for in Special Civil Suit No. 148 of 1989 read as under:-

(a) That this Hon'ble Court may be pleased to declare that the plaintiff is having one share int he said property bearing House No.167, Old Bazar, Kirkee, Pune-3.

(b) That a preliminary decree of partition of the half share of plaintiff be passed and her half share be affixed by way of appointing a Commissioner or any other manner this Hon'ble Court deems fit.

(c) That a perpetual injunction against defendant No.1 restraining him from executing the decree obtained by him in special Civil Suit No.6/77 of this Hon'ble Court against the half undivided share of the property bearing house NO. 167, Old Bazar Kirkee, Pune-3.

(d) The cost of this suit be awarded.

. For the relief of temporary injunction in terms of prayer clause (c) above, the application at Exh.5 was filed thus praying for restraining the defendant No.1

from executing the decree in his favour in Special Civil Suit No.6/77 in respect of the suit property bearing House No. 167, Old Bazar, Kirkee, Pune-3 and total area admeasuring about 887 Sq. Ft.

3. The trial Court in its order dated 16.8.89 had noted that Special Darkhast No.179 of 1984 was filed by the present defendant No.1 and there was no prima facie case made out by the Plaintiff so also restrain the defendant No.1 from executing the decree. The learned Additional District Judge after hearing both the parties at length and considering the evidence on record, confirmed the order passed by the trail Court. The Special Civil Suit No. 148 of 1989 has been filed by Smt. Chandrabhagabai wd/o Uddhav Gadewar and during the pendency of the Civil Revision Application before this Court, she died and her grand son Shri. Prashant Madhukar Gadewar (son of present respondent No.2) has been brought on record as the petitioner.

4. Sabayya Gadewar had a son by name Manaji and this Manaji begot two sons by name Uddhav and Rajaram. Smt. Chandrabhagabai is the wife of Uddhav. Rajaram begot a son by name Shripad and Uddhav begot three sons viz. Madhukar, Suresh and Chandrakant. Shripad, the son of Rajaram died in 1972 at Pune and during his life time he had executed a gift deed in

favour of the present respondent No.1 on 3.5.1965 and it was registered at Sr.No.700 in the office of Joint Sub-Registrar Haveli-2. It was later on approved vide C.A.C.R. No.7 (1) dated 21.2.1966. By the said gift deed the entire suit property was purportedly transferred in the name of the present respondent No.1.

5. The Civil Suit No.6 of 1977 was came to be filed by the present respondent No.1 and the present respondent Nos. 2 and 3 were impleaded as defendants. The said suit was decreed by order dated 20.4.1982. The decree was challenged in First Appeal No. 341 of 1982 and it was dismissed on 12.9.1982. The Second Appeal No. 524 of 1984 filed before this Court was also dismissed on 20.11.1984, and finally Special Leave Petition No. 1392 of 1984 also came to be dismissed by the Supreme Court on 5.12.1984. On 10.12.1984 i.e. within a week from the order passed by the Supreme Court Dr. Malti, the wife of the present respondent No.2 filed Civil Suit No. 151 of 1984 in the Small Causes Court at Pune claiming tenancy rights in respect of the suit property and she had also stated that the suit property was bequeathed by Shripad Gadewar in favour of Suresh Gadewar, the present respondent No.3. Interim order below Exh.5 was passed in her favour on 10.12.1984 and the same was challenged in Misc. Civil Appeal

No. 79 of 1986 by the present respondent No.1. The learned Additional District Judge while allowing the appeal noted that the suit was based on forged and bogus rent receipts procured by Mrs.Malti Madhukar Gadewar. Ultimately the Civil Suit No. 151 of 1984 was dismissed and First Appeal No. 816/1988 challenging the dismissal of the Suit was also dismissed. Writ petition No. 848 of 1988 challenging the orders of both the courts below was also dismissed by this Court.

6. One Mr. Ramesh H. Polarpawar, the near relation of the present respondent No.2 filed one more Suit i.e. Civil Suit No. 191 of 1984 in respect of the very same suit property and the said suit was dismissed, first Appeal also met with the same fate and the orders passed by the Courts below were confirmed by this Court. The next round of litigation came by way of Civil Suit No. 52 of 1985 filed by Chandrakant, the third son of Smt. Chandrabhagabai in respect of the suit property. The same suit was dismissed and so also the first Appeal by the District Court. While Smt. Chandrabhagabai filed Special Civil Suit No. 148 of 1989 on or about 7.2.1989 within about 10 days i.e. on or about 17.2.1989 Prashant Madhukar Gadewar who is the present petitioner in place of his grandmother, also filed Regular Civil Suit No. 369 of 1989. The same

was dismissed on 23.3.1989. The first appeal against the said order was also dismissed by the District Court.

7. Mr. Anturkar, the learned counsel for the petitioner contended that the suit property was ancestral property in which Uddhav the husband of plaintiff and Rajaram, father of Shripad had equal share and therefore, even if late Shripad had gifted the property to the present respondent No.1 validly, the said gift cannot be more than half of the share of Shripad and on the remaining half, the original plaintiff has the right. Mr. Chandrachud, the learned counsel for the respondent No.1, on the other hand insisted that the property which was the subject matter of the gift as upheld right upto the Supreme Court is the entire suit property and not its half share. Therefore, to make out a prima facie case in favour of the plaintiff, the documentary evidence was considered by both the courts below and it was observed that right from 1951 onwards the suit property was shown in the exclusive possession of Shripad. The Will executed and registered in favour of the respondent No.1 does not state that half of the ancestral property derived from Manaji, was gifted by Shripad to the present respondent No.1. However, in the gift there is a reference of the property as ancestral property and relying upon the

same, it was contended by Mr. Anturkar, that even if the gift had covered the entire property, Shripad had no right to give in gift half share of Uddhav and therefore, the plaintiff was entitled for an order of injunction in respect of the said half share.

8. These arguments had though prima facie impressed the lower appellant court but at the same time, the learned Additional District Judge noted that there was no documentary proof in support of these contentions and the gift deed having been upheld right upto the Supreme Court, there was no scope, prima facie, to hold that the plaintiff was entitled for interim injunction on half share of the suit property.

9. Having regards to the chain of litigation in respect of the suit property and at the instance of the different members of the same family or their close relations, it is clear that there was no case made out to stay the execution proceedings in respect of the suit property. The execution proceedings have been pending for the last more than 20 years. There is no doubt that the Civil Revision Application was pending in this Court for about 12 years and stay was granted by this Court to the proceedings of the special Darkhast No. 179 of 1984. However, having gone through the reasoning set out by both the courts

below and after considering the arguments of the learned counsel for the respective parties, I am satisfied that the orders impugned do not suffer from any error apparent on the face of the record and therefore, there is no reason to cause any interference in the said orders, in this petition under Article 227 of the Constitution of India. The petition, is therefore, rejected summarily.

10. At this stage, Mr. Anturkar, the learned counsel for the petitioner submitted an oral application to continue the stay order for a period of four weeks. Having regard to the fact that the execution decree is pending for the last more than two decades, there is no justification to allow this application and therefore, the request for continuing the stay is hereby rejected.

11. Certified copy is expedited.